

## **REMARKS**

Claims 2-4 and 14 were pending. Applicant has cancelled claims 2-4 and 14. Claims 36-39 are newly presented. No new matter has been introduced.

### **Election/Restrictions**

The examiner withdraw claims 2-4 and 14 from consideration as being directed to a non-elected invention, leaving no claims pending. Applicant has cancelled claims 2-4 and 14, and presented claims 36-39, which it believes cite features that are directed to the invention.

### **Rejections under 35 USC §112**

Claims 2-4 and 14 stand rejected under §112, first paragraph, as failing to comply with the written description requirement. In particular, the examiner states that the specification does not adequately disclose Figure 2b.

This ground of rejection is respectively traversed. Figure 2b is described in paragraphs 0087, 0088, 0091, 0093 and 0094.

### **Rejections under 35 USC §102**

Claims 2 -4 and 14 stand rejected under §102(e) as being anticipated by Woloszko et al. (US 6,896,674). Claims 2-4 and 14 are cancelled. Claims 36-39 are newly presented.

In one embodiment of the present invention, as set forth in claim 2 (now claim 36), an electro-surgical apparatus includes an electrode with a cutting edge and has one or more extenders. A housing is coupled to the electrode and has a top with a top proximal section and a bottom with a bottom proximal section. The top proximal section has a geometry that facilitates creation of a skin flap with a substantially uniform thickness that includes a skin layer and an adjacent layer of subcutaneous tissue. The bottom proximal section has a geometry that preserves a plane of tissue that is positioned adjacent to the adjacent layer of subcutaneous tissue. The bottom proximal section has a most proximal point at "A", and the top proximal section has a most

proximal point at "B" with A being more proximal than B. The bottom proximal section is defined by point A and a more distal point "C", with the electrode extending from point A to point B. The electrode forming a hypotenuse of a triangle defined by points A, B, and a point D that is positioned at a more proximal position than point B. The bottom proximal section forms a hypotenuse of a triangle defined by points A, C and a point E with point E being more proximal than point C. A distance between points D and A being 1 mm to 2.5 cm, a distance between points D and B being 0 mm to 1.5 cm, a distance between points A and E being 0 mm to 1.5 cm, and a distance between points E and C being 0 mm to 1.5 cm.

Woloszko et al. fails to suggest or teach such a device. The device of Woloszko et al. does not provide for the creation of a small incision without opening up a large incision. Instead, Woloszko et al., discloses a bare blade that will go through the skin. Woloszko et al., fails to provide a device that includes the geometry of the present invention with an electrode that forms a hypotenuse of a triangle, and also a bottom proximal section that also forms a hypotenuse of a triangle.

### CONCLUSION

Applicant believes that the application is in condition for allowance. The Commissioner is authorized to charge Deposit Account 08-1641 for any payment due in connection with this paper, including petition fees and extension of time fees.

Respectfully submitted,  
HELLER EHRMAN LLP

Date: \_\_\_\_\_

6/4/07

By: \_\_\_\_\_



Paul Davis, Reg. No. 29,294

275 Middlefield Road  
Menlo Park, CA 94025  
Telephone: (650) 324-7041  
Customer No. 25213